

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GARY NORTINGTON,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:10 CV 424

JIM ARMSTRONG, et al.,

Defendants.

REPORT AND RECOMMENDATION

This matter is before the Court on Defendant Wood's Motion to Dismiss for Insufficient Service of Process. (Dkt. #100). Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Defendant's motion be **denied as moot**.

Because Plaintiff is not proceeding as a pauper in this matter, he is responsible for properly effecting service of the summons and complaint on Defendants. Plaintiff attempted to effect service on Defendant Woods by personally mailing him a copy of the summons and complaint via certified mail. As Defendant correctly observes, Federal Rule of Civil Procedure 4(c)(2) provides that service may be effected by "[a]ny person who is at least 18 years old and *not a party*." Defendant asserts that pursuant to this provision, Plaintiff is not permitted to effect service by personally mailing to a defendant a copy of the summons and complaint. *See, e.g., Olson v. Federal Election Commission*, 256 F.R.D. 8, 10 (D.D.C. 2009) ("Rule 4(c)(2) is violated when a plaintiff personally attempts to serve a defendant. . .by mail"); *Khan v. Chevrolet*, 2010 WL 3270969 at *3 (E.D.N.C., Aug. 18, 2010) (pursuant to Rule 4(c)(2) "Plaintiff cannot personally mail the summons and amended complaint to Defendant's authorized agent for service"); *Sphouris v. Aurora Loan Services, LLC*, 2011 WL 768702

at *5 *(D. Nev., Feb. 28, 2011) (plaintiff's attempt to effect service by mail ineffective "because Rule 4(c)(2) requires service to be performed by a person 'not a party' to the litigation").

Defendant appears to be correct that Plaintiff's initial effort to serve the summons and complaint was ineffective. However, after filing the present motion Defendant Woods executed a "Waiver of the Service of Summons." (Dkt. #141, Exhibit A). The execution of this waiver renders moot, Defendant Woods' claim that service in this matter was insufficient.

CONCLUSION

For the reasons articulated herein, the undersigned recommends that Defendant Wood's Motion to Dismiss for Insufficient Service of Process, (dkt. #100), be **denied as moot**.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Date: April 5, 2011

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge